CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:	CCRB Case #:		Force		Discourt.	☐ U.S	S.
Matthew Campos		Squad #16	201609358	V	Abuse		O.L.	☐ Inju	ıry
Incident Date(s)		Location of Incident:	L	F	Precinct:	18	Mo. SOL	EO S	SOL
Tuesday, 11/08/2016 10:00 PM		New Jersey Avenue an	d New Lots Avenue		75	5	5/8/2018	5/8/2	018
Date/Time CV Reported		CV Reported At:	How CV Reported:		Date/Time	Rece	eived at CC	RB	
Wed, 11/09/2016 12:57 AM		CCRB	On-line website		Wed, 11/0	9/201	16 12:57 Al	М	
Complainant/Victim	Туре	Home Addre	ess						
Witness(es)		Home Addre	ess						
Subject Officer(s)	Shield	TaxID	Command						
1. SGT Henry Daverin	03631	945645	075 PCT						
2. POM Tony Cuoco	17359	950261	075 PCT						
3. POM James Seder	06788	947479	075 PCT						
Witness Officer(s)	Shield N	o Tax No	Cmd Name						
1. POM Michael Desposito	2001	954726	075 PCT						
2. POM Michael Lagattolla	28165	955036	075 PCT						
Officer(s)	Allegatio	n			Inve	stiga	ator Recor	nmenda	tion
A.SGT Henry Daverin	Abuse: Se \$ 87(2)(b)	ergeant Henry Daverin	stopped ^{§ 87(2)(b)}		and				
B.POM Tony Cuoco	Abuse: Pand § 87(2)(olice Officer Tony Cuo	co stopped § 87(2)(b)						
C.POM James Seder	Abuse: Police Officer James Seder stopped § 87(2)(b) and § 87(2)(b)								
D.POM Tony Cuoco	Abuse: P	olice Officer Tony Cuo	co frisked § 87(2)(b)						
E.POM Tony Cuoco	Abuse: P	olice Officer Tony Cuo	co searched § 87(2)(b)						
F.POM James Seder	Abuse: P	olice Officer James Sed	er frisked ^{§ 87(2)(b)}						
§ 87(4-b), § 87(2)(g)									



On November 9, 2016, \$87(2)(b) filed a complaint on behalf of himself and \$87(2)(b) via the online website.

At approximately 10:00 PM on November 8, 2016, \$87(2)(b) and § 87(2)(b) parked their black Honda Accord in front of a fire hydrant at the intersection of New Jersey Avenue and New Lots Avenue in Brooklyn. \$87(2)(b) left the vehicle and went to a nearby grocery store. While [8] was away from the vehicle, 75th Precinct Anti-Crime officers Sergeant Henry Dayerin, Police Officer James Seder, and Police Officer Tony Cuoco spotted the vehicle. After watching the vehicle, the officers approached the vehicle to conduct an investigation. The officers approached the vehicle and began to speak with \$87(2)(6) then returned to the vehicle and the officers stopped him, asked for his identification, and out of the vehicle (Allegation A, B, and C). §87(2)(b) refused to provide identification. PO Cuoco frisked § 87(2)(b) (Allegation D). PO Cuoco then reached into § \$ 87(2)(b) s pants pocket, and retrieved \$ 37(2)(b) s wallet (Allegation E). While \$ 87(2)(b) being frisked, PO Seder ordered \$87(2)(b) out of the vehicle, and frisked him (Allegation F). At some point during the stop, Police Officer Michael Lagatolla and Police Officer Michael Desposito of the 75th Precinct arrived. They did not interact with the civilians. The incident ended when it was discovered that [3][7(2)[5] should be brother is an NYPD officer. No arrests were made or summons issued. Sgt. Daverin failed to prepare a memo book entry regarding this incident (Allegation G).

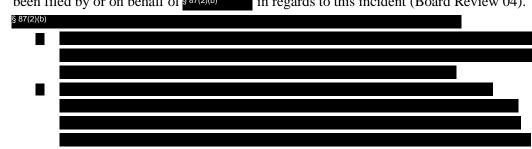
This case has video evidence but the video footage does not depict any of the allegations and so it was not included in the board recommendation report. Please note that the full video can be found at Board Review 01 and the transcription of this video can be found at Board Review 02. The video was taken by \$87(2)(6) at the end of the incident.

The investigation was submitted for closure past the 90-day benchmark because witness officers were not identified until February 08, 2017, and not interviewed until February 16, 2016.

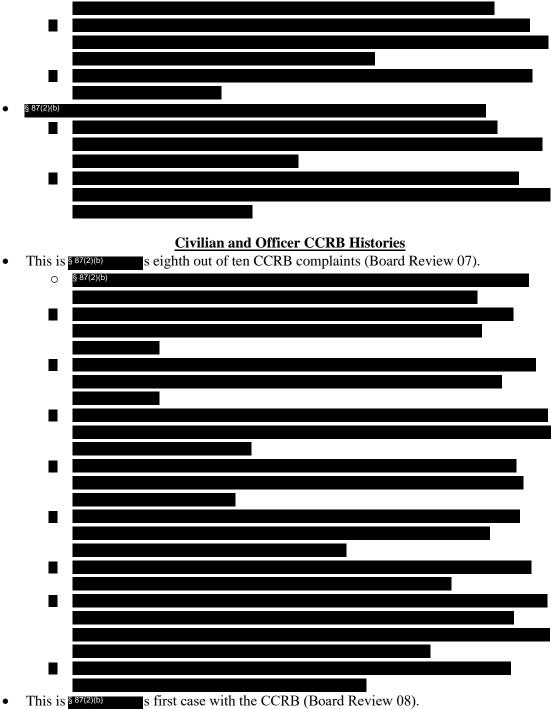
An agency attorney was consulted for this case.

Mediation, Civil and Criminal Histories

- \$87(2)(b) rejected mediation during his sworn statement \$87(2)(b) (Board Review 03).
- On March 7, 2017, the Comptroller's office confirmed that a Notice of Claim has not been filed by or on behalf of [887(2)(b)] in regards to this incident (Board Review 04).



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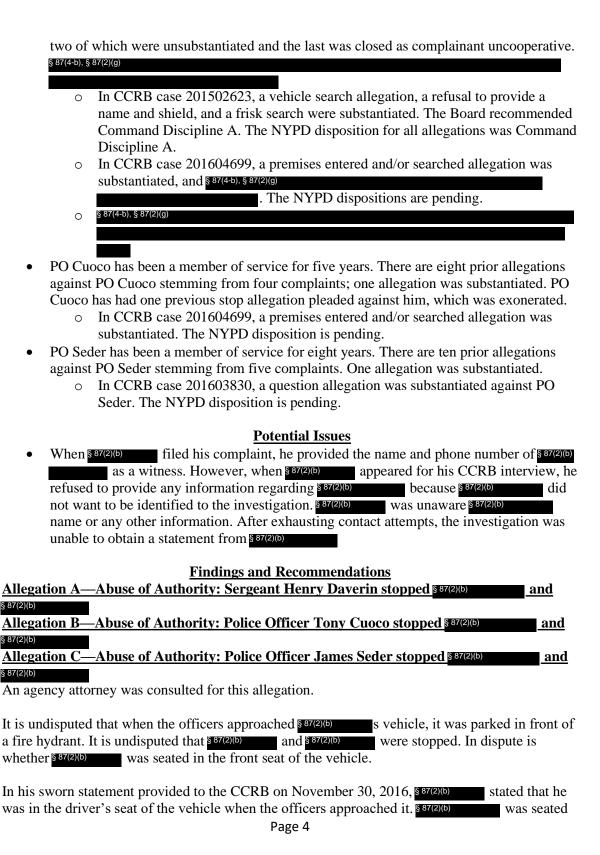


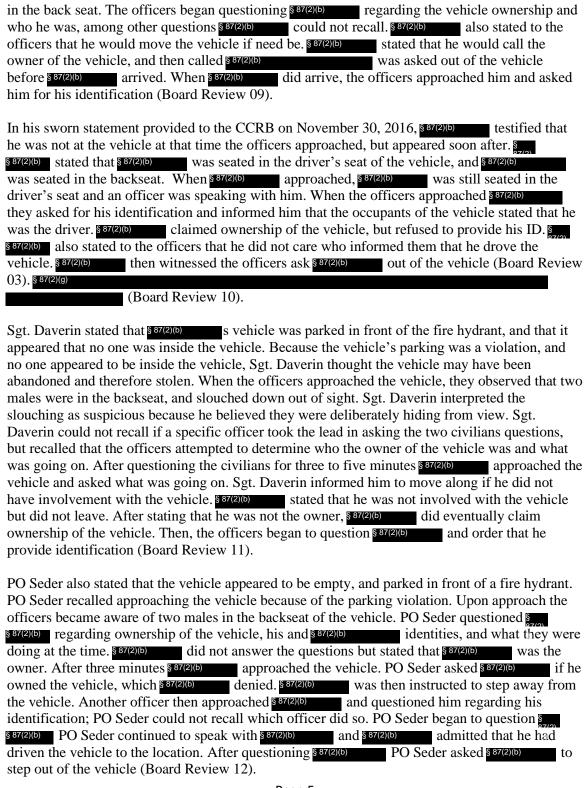
Sgt. Daverin has been a member of service for nine years. There are 50 prior allegations

• Sgt. Daverin has been a member of service for nine years. There are 50 prior allegations against Sgt. Daverin stemming from 20 prior complaints; four prior allegations were substantiated. Sgt. Daverin has had three previous stop allegations pleaded against him, Page 3

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§ 87(2)(b)





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PO Cuoco also stated that when he and the other officers observed § 87(2)(b) s vehicle, it was parked in violation in front of the fire hydrant and appeared to be empty, running, and parked crooked. PO Cuoco recalled that he and the other officers believed the vehicle could be stolen. PO Cuoco did not recall being aware of any stolen vehicle reports, but remarked that some stolen vehicle complaints are made the days after a vehicle is stolen. When the officers approached, they discovered that two civilians were inside the vehicle, seated in the back seat. The officers questioned the civilians regarding who owned the vehicle and who drove it to the location, but the civilians stated that they did not know. After approximately one to two minutes \$37(2)(b) approached the vehicle. §87(2)(b) was asked who he was, but did not identify himself. was asked if the vehicle belonged to him. Initially, §87(2)(b) denied ownership of the vehicle, but then stated that he was the owner. PO Cuoco asked for \$87(2)(b) s identification, in order to verify his ownership of the vehicle, and issue § 87(2)(6) a summons for the parking violation (Board Review 13).

When PO Lagatolla and PO Desposito arrived on the scene, the civilians had already been stopped. PO Lagatolla and PO Desposito were not present for the initial interaction with the civilians, and did not receive any radio call that would have informed them of the reasons they were stopped. (Board Review 14 and Board Review 15).

Section 1202 (b) of the <u>Vehicle Traffic Code</u> states, "No person shall stop, stand or park a vehicle within fifteen feet of a fire hydrant except when such vehicle is attended by a licensed operator or chauffeur who is seated in the front seat and who can immediately move such vehicle in case of emergency, unless a different distance is indicated by official signs, markings or parking meters" (Board Review 16).

<u>NYPD Patrol Guide</u> Procedure 209-08 instructs officers on how to issue parking violations summons. The procedure instructs officers to include the first and last name of the violator if they are present (Board Review 17).

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Allegation D—Abuse of Authority: Police Officer Tony Cuoco frisked §87(2)(b)
Allegation E—Abuse of Authority: Police Officer Tony Cuoco searched 887(2)(6)
An agency attorney was consulted for this case.
It is undisputed that DO Cycle frielded and searched 507/0VIN
It is undisputed that PO Cuoco frisked and searched \$87(2)(b) stated that after arguing with officers regarding his identification, he was sent to stand at the back of his vehicle.
There, an officer frisked his pockets, and removed his wallet from his back pocket.
There, all officer frisked his pockets, and removed his wanter from his back pocket.
testified that after the officers ordered him to provide his identification, he argued
with them that he should not have to provide his identification because he was not the driver of
the vehicle, and that if the officers wrote a summons, the summons should be for the vehicle.
was then ordered to the back of his vehicle. At the back of his vehicle, PO Cuoco
approached \$87(2)(b) PO Cuoco moved closer to \$87(2)(b) and \$87(2)(b) took a step
back and put his hands in the air to show PO Cuoco that he had nothing in his hands. PO Cuoco
instructed § 87(2)(b) not to step back. § 87(2)(b) then stated, "I'm not consenting to any
search." PO Cuoco replied that he did not need consent to search. PO Cuoco frisked
s front and back pants pockets, the front pocket of the sweater he was wearing, and his
waist area. Immediately after \$87(2)(b) was frisked, PO Cuoco reached into \$87(2)(b) s back
pocket and removed his wallet, which contained \$87(2)(6) s identification. PO Cuoco then took
something out of \$87(2)(b) s wallet and took a picture of it; \$87(2)(b) was unsure what was
taken out of his wallet, but believed it was his identification (Board Review 03).
stated that § 87(2)(b) argued with PO Cuoco, and refused to provide his
identification, prompting PO Cuoco to ask § 87(2)(b) if his license was suspended. Then the
officer placed both hands into \$87(2)(b) s front pants pockets in order to retrieve \$87(2)(b) s
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own pockets, and recovered his own identification (Board Review 09). PO Cuoco stated that he was the first officer to speak to \$87(2)(b) after \$87(2)(b) approached the vehicle. PO Cuoco asked \$87(2)(b) who he was, what he was doing, and if he owned the vehicle. § 87(2)(5) stated that he did not own the vehicle, and refused to identify himself. Eventually, § 87(2)(b) did claim ownership of the vehicle, but continued to refuse to provide identification. PO Cuoco instructed \$87(2)(6) to give him his identification in order to s ownership of the vehicle, and issue a summons for the parking violation; \$ 87(2)(b) s identification was required in order to issue a summons for the parking violation. PO Cuoco was aware that the if the operator of a vehicle is present, their name must be included on the parking summons. §87(2)(b) s refusal to provide identification, added to PO Cuoco's suspicions that the vehicle was stolen. As PO Cuoco spoke with \$87(2)(b) he noticed a bulge in \$87(2)(b) s back pants pocket. PO Cuoco could not recall the size or shape of the bulge. PO Cuoco believed that §87(2)(6) be armed because of the suspected vehicle theft. PO Cuoco remarked that because vehicle theft is a violent crime, it was reasonable to believe the suspects were armed. Other than the connection between the vehicle theft and weapons, PO Cuoco did not recall any indication that § 87(2)(5) was armed. In order to verify whether or not §87(2)(b) was in possession of a weapon, PO Cuoco conducted a frisk. PO Cuoco frisked \$87(2)(b) s waist, chest, and under his arms. PO Cuoco reached in to one of §87(2)(b) s back pants pockets, and retrieved §87(2)(b) s wallet, PO Cuoco had access to his identification card, and he learned s identity. PO Cuoco took a picture of \$87(2)(b) s identification with a department cellular phone (Board Review 13). PO Seder stated that he did not witness \$87(2)(6) being frisked or searched by any officer, and did not become aware of another officer frisking \$87(2)(b) at a later time (Board Review 12). Sgt. Daverin stated that he was unaware if any officers frisked or search \$87(2)(b) at any time. Sgt. Daverin also noted that he believed the vehicle might have been stolen. Sgt. Daverin claimed that the empty vehicle led to suspicion that the vehicle was stolen. Sgt. Daverin still remained suspicious when it was discovered that §87(2)(b) and §87(2)(b) were in the vehicle because he believed they were deliberately hiding (Board Review 11). PO Lagatolla and PO Desposito stated that they did not witness any individual be frisked at any point during the incident. They stated that they did not witness any officer reach into any

wallet. The officer did not remove anything from the pockets. § 97(2)(5) then reached into his

civilian's pocket and retrieve a wallet. They also stated that they did observe any bulges on them, or any indication that they were armed (Board Review 14 and Board Review 15).

People v. Mack, 26 N.Y. 2d 311 (1970), states the following in regards to frisks involving violent crimes, "Where, however, the officer confronts an individual whom he reasonably suspects has committed, is committing or is about to commit such a serious and violent crime as robbery or, as in the instant case, burglary, then it is our opinion that that suspicion not only justifies the

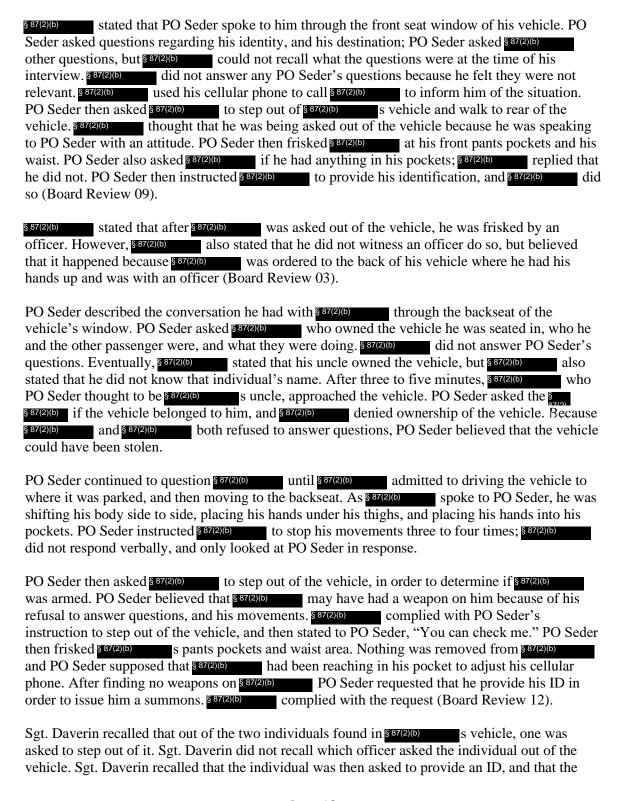
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detention but also the frisk, thus making it unnecessary to particularize an independent source for the belief of danger." This case would allow a frisk when officers have reasonable suspicion of a serious and violent crime (Board Review 18).

<u>Terry v. Ohio</u>, 392 U.S. 1 (1968), describes how limited frisks can take place without probable cause if the officer reasonably believes that the individual is armed. The case goes on to describe that searches without probable cause are permissible only for weapons (Board Review 19).

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Allegation F—Abuse of Authority: Police Officer James Seder frisked § 87(2)(b)
Anegation r—Aduse of Authority: Fonce Officer James Seder Hisked
It is undisputed that PO Seder frisked \$87(2)(b) testified that after he was asked
out of § 87(2)(b) s vehicle, an officer frisked him.
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individual complied. Sgt. Daverin was unaware of any officer frisking the individual (Board Review 11).

PO Cuoco also noted that he believed solution solution and the seemingly empty vehicle. PO Cuoco remarked that in a grand larceny auto situation, he would believe that the suspected individuals were armed. PO Cuoco stated that that at some point while solved was present, one or both of the individuals found inside the vehicle was asked to step out of the vehicle. PO Cuoco did not recall which officer asked the individual or individuals out of the vehicle, but stated that they were asked out of the vehicle because the officers were unsure if the vehicle was stolen. PO Cuoco recalled that one individual was frisked, but did not recall why. PO Cuoco did not frisk the individual himself, and did not recall which officer did so (Board Review 13).

At no point during the incident did PO Lagatolla or PO Desposito witness any officer frisk any individual. PO Lagatolla and PO Desposito both noted that they did not observe any bulges on the civilians, or any indication that they were armed (Board Review 14 and Board Review 15).

People v. Robinson, 278 A.D.2d 808, describes a situation in which police officers frisk a suspect after repeated commands that the suspect stop reaching into his coat pocket. In regards to frisks, the case states, "Where no more than a common-law right to inquire exists, a frisk must be based upon a reasonable suspicion that the officers are in physical danger and that defendant poses a threat to their safety." The case goes on to describe before the frisk took place, the officers had observed the suspect place his hands into his jacket pocket, and the officers then ordered the suspect to remove his hand from his pocket. The suspect complied, but placed his hand back into his pocket shortly after. After three commands were given to the suspect, and the suspect continued to reach into his pocket, the officers conducted a frisk of the suspect's pocket. The case goes on to describe the permissibility of the frisk by stating the following, "In light of the repeated movements of the defendant toward that pocket despite the officer's requests that he remove his hand from his pocket, we conclude that the frisk was a constitutionally justified intrusion designed to protect the safety of the officers," (Board Review 22).

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Squad Leader:			
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